Thomas R. Curtin
George C. Jones
Kathleen N. Fennelly
GRAHAM CURTIN
A Professional Association
4 Headquarters Plaza, P.O. Box 1991
Morristown, New Jersey 07962-1991
Telephone: (973) 292-1700

Asim Varma *(pro hac vice to be submitted)*
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Avenue, NW
Washington, DC 20001-3743
Telephone: (202) 942-5180

Attorneys for Proposed Intervenor
Federal Housing Finance Agency

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DAVID J. VOACOLO, Plaintiff, v. FEDERAL NATIONAL MORTGAGE ASSOCIATION, and UNITED STATES of AMERICA, Defendants.	Civil Action No. 17-5667 (BRM)(LHG) **NOTICE OF MOTION TO INTERVENE PURSUANT TO FED.R.CIV.P. 24 (UNOPPOSED)**

TO: Ravi P. Shah
BRUS CHAMBERS, LLC
101 Hudson Rd., Suite 2112
Jersey City, New Jersey 07302
Attorneys for Plaintiff

PLEASE TAKE NOTICE that on Monday, May 7, 2018, at 10 a.m. or as soon thereafter as counsel may be heard, proposed intervenor Federal Finance Housing Agency ("FHFA") will move, by and through its undersigned counsel, before the Honorable Brian R. Martinotti,

U.S.D.J., for entry of an Order permitting it to intervene in this matter pursuant to Fed.R.Civ.P. 24(a)(1).

PLEASE TAKE FURTHER NOTICE that, in support of this motion, FHFA will rely on the Memorandum of Law submitted herewith, together with any papers it may submit in reply to any opposition filed.

PLEASE TAKE FURTHER NOTICE no parties oppose the relief being requested herein.

PLEASE TAKE FURTHER NOTICE that a proposed form of Order is also submitted.

Date: March 26, 2018

Respectfully submitted,

/s/ Thomas R. Curtin
GRAHAM CURTIN
A Professional Association
Attorneys for Proposed Intervenor
Federal Housing Finance Agency

Of Counsel:

Asim Varma (*pro hac vice to be submitted)*
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Avenue, NW
Washington, DC 20001-3743
Telephone: (202) 942-5180
E-mail: Asim.Varma@apks.com

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DAVID J. VOACOLO, Plaintiff, v. FEDERAL NATIONAL MORTGAGE ASSOCIATION, and UNITED STATES OF AMERICA, Defendants	:	Civil Action No. 17-05667 (BRM)(LHG) **Motion Returnable: May 7 , 2018**

MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION TO INTERVENE BY THE FEDERAL HOUSING FINANCE AGENCY, AS CONSERVATOR OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION

Thomas R. Curtin
Kathleen N. Fennelly
GRAHAM CURTIN
A Professional Association
4 Headquarters Plaza
P.O. Box 1991
Morristown, New Jersey 07962-1991
(973) 292-1700

Asim Varma
Howard N. Cayne
David Bergman
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Avenue NW
Washington, DC 20001
Tel: (202) 942-5000
(*Pro Hac Vice* Petitions to be Submitted)

Attorneys for Proposed Intervenor Federal Housing Finance Agency

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Rules and Statutes

The Federal Housing Finance Agency ("FHFA" or "Conservator"), as Conservator of the Federal National Mortgage Association ("Fannie Mae"), respectfully moves this Court pursuant to Federal Rule of Civil Procedure 24 to intervene in this action. FHFA as Conservator has a statutory right to intervene in any actions to which Fannie Mae is a party. *See* 12 U.S.C. § 4617(b)(2)(A)(i) (FHFA as Conservator has succeeded to "all rights, titles, powers, and privileges" of Fannie Mae), § 4617(b)(2)(B)(i) (FHFA as Conservator has the right to "take over the assets of and operate the regulated entity with all the powers of the shareholders, the directors, and the officers of [Fannie Mae] and conduct all business of [Fannie Mae]."); *see also* Fed. R. Civ. P. 24(a)(1) (the "court must permit anyone to intervene who . . . is given an unconditional right to intervene by a federal statute").

In the alternative, FHFA moves for (1) intervention of right under Federal Rule of Civil Procedure 24(a)(2), which allows a party to intervene when the applicant "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest," Fed. R. Civ. P. 24(a)(2), or (2) permission to intervene pursuant to Rule 24(b).

Plaintiff David J. Voacolo ("Plaintiff") does not oppose this motion to

intervene.

Filed concurrently is a Motion to Dismiss on behalf of Fannie Mae and proposed Intervenor FHFA. *See* Fed. R. Civ. P. 24(c) (stating that a motion should "be accompanied by a pleading that sets out the claim or defense for which intervention is sought.").

The motion to dismiss argues that (1) Fannie Mae is not a proper party to this action because these causes of action can be brought only against the United States, (2) Plaintiff's due process and illegal exaction claims fail because he lacks a cognizable property interest, (3) Plaintiff's claims are inherently derivative in nature, and Plaintiff lacks the right to bring a derivative action, (4) the district court lacks jurisdiction over Plaintiff's illegal exaction claim because he seeks damages in excess of $10,000, and (5) Plaintiff's illegal exaction claim fails because Plaintiff has not actually paid money to the United States.

STATEMENT OF FACTS

I. FANNIE MAE AND FHFA

Fannie Mae, a corporation organized and existing under the laws of the United States, was established as a government sponsored enterprise to provide stability and liquidity to the secondary housing market. 12 U.S.C. § 1716(1), (4). Pursuant to its statutory mission, Fannie Mae owns or guarantees millions of home loans throughout the United States.

The Housing and Economic Recovery Act of 2008 ("HERA"), Pub. L. No. 110-289, 122 Stat. 2654, which Congress enacted on July 30, 2008, established FHFA as an independent federal agency. FHFA is the primary regulatory and oversight authority for Fannie Mae and the Federal Home Loan Mortgage Corporation ("Freddie Mac") (together, "the Enterprises").

In September 2008, pursuant to HERA, 12 U.S.C. § 4617(a), FHFA's Director placed the Enterprises into conservatorships. *See* Verified Class Action Complaint ("Complaint" or "Compl.") ¶ 4. In its capacity as Conservator, FHFA succeeded to "all rights, titles, powers, and privileges" of the Enterprises and their respective stockholders, boards of directors and officers. *See* 12 U.S.C. § 4617(b)(2)(A)(i). Accordingly, the Conservator is authorized to participate, at its discretion, in litigation involving the Enterprises in a manner consistent with the Conservator's duties. In addition, FHFA is empowered as Conservator to "take such action as may be — (i) necessary to put [the Enterprises] in a sound and solvent condition, and (ii) appropriate to . . . preserve and conserve the assets and property of [the Enterprises]," 12 U.S.C. § 4617(b)(2)(D), and has authority to "take over the assets of and operate [the Enterprises] with all the powers of the shareholders, the directors, and the officers of [the Enterprises] and conduct all business of [the Enterprises]," 12 U.S.C. § 4617(b)(2)(B)(i).

HERA amended the Enterprises' statutory charters to grant the United States

Treasury authority to purchase securities issued by the Enterprises, so long as they reached "mutual agreement" on the terms. *See* 12 U.S.C. § 1719(g)(1)(A) (Fannie Mae); 12 U.S.C. § 1455*(l)*(1)(A) (Freddie Mac). Pursuant to this authority, Treasury and the Conservator entered into two Senior Preferred Stock Purchase Agreements (the "PSPAs"), on behalf of each Enterprise, through which Treasury agreed to infuse hundreds of billions of taxpayer dollars into the Enterprises as needed. As consideration for this massive commitment, the PSPAs gave Treasury a comprehensive bundle of rights—including right to a 10% dividend based on the total amount drawn by the Enterprise from Treasury, known as the liquidation preference.

As required by the terms of the PSPA, Treasury began infusing billions of dollars into Fannie Mae in each quarter in which its liabilities exceeded its assets. While the PSPAs initially capped Treasury's commitment at $100 billion per Enterprise, this amount proved inadequate, and the parties amended the PSPAs via the "First Amendment" to double the cap to $200 billion per Enterprise. When it appeared that even that amount may be insufficient, the parties amended the PSPAs again via a "Second Amendment," which permitted the Enterprises to draw *unlimited* amounts from Treasury to cure net-worth deficits through 2012. Pursuant to the Second Amendment, Treasury's commitment became fixed at the end of 2012, and future draws would reduce the remaining funds available. On

August 17, 2012, FHFA, as Conservator of the Enterprises, and Treasury executed the Third Amendment to the PSPAs, which replaced the fixed-rate 10% annual dividend with a variable dividend in the amount (if any) of each Enterprise's positive net worth.

II. SUMMARY OF CASE

On August 2, 2017, Plaintiff David J. Voacolo filed a Verified Class Action Complaint against Fannie Mae and the United States. Plaintiff claims that he purchased 64,000 shares of Fannie Mae's stock for seventy-seven cents per share in August 2009, "relying on statements by the Defendants that the conservatorship would terminate once Defendant Fannie Mae became solvent again." Compl. ¶ 6. Plaintiff later sold some of these shares but continues to hold 50,000 of them. *Id.* Plaintiff claims that the Third Amendment has deprived him of the value of his shares, which he estimates would now be worth $35.00 each, for a total of $1,750,000, "[i]f not for the operation of the Third Amendment." *Id.* ¶ 10.

Plaintiff alleges that the Third Amendment deprived him of his due process rights because he "had no involvement in the entering of the Third Amendment, nor [did he have] an opportunity to have his objection heard." *Id.* ¶¶ 12-13. He also contends that the Third Amendment constituted an illegal exaction. *Id.* ¶ 13. He claims that Fannie Mae and the United States had led shareholders to believe that "the conservatorship would end once Fannie Mae was deemed solvent," but

they had always intended "that the conservatorship would, in reality, continue until such time as Defendant U.S. Treasury deems that taxpayers have received a sufficient return on their investment." *Id.* ¶ 15. Plaintiff seeks a judgment of $5,000,000. *Id.* ¶ 16.

This action is not Plaintiff's first lawsuit challenging the Third Amendment. On June 26, 2016, Plaintiff filed a complaint in the U.S. District Court for the District of Columbia with allegations very similar to those in this Complaint. *See* Complaint, *Voacolo v. Fed. Nat'l Mortg. Ass'n, et al.*, No. 1:16-cv-1324 (D.D.C. June 26, 2016) ("D.D.C. Complaint"). Plaintiff brought that action against Fannie Mae, FHFA, and the U.S. Department of the Treasury. Instead of due process and illegal exaction claims, Plaintiff's previous suit brought a claim under the Administrative Procedure Act ("APA").[1] D.D.C. Complaint at ¶¶ 28-36. Plaintiff demanded $2,500,000 in damages, half of what he demands now. *Id.*, Relief Requested ¶ B. Treasury filed a motion to dismiss, and FHFA and Fannie Mae filed a joint motion to dismiss. Mot. to Dismiss by the U.S. Dep't of the Treasury, *Voacolo*, No. 1:16-cv-1324 (D.D.C. Sept. 20, 2016); Mot. to Dismiss by Defs.

[1] Numerous other lawsuits have been brought to challenge the Third Amendment under the APA. So far, all of them have been dismissed. *Perry Capital LLC v. Mnuchin*, 848 F.3d 1072 (D.C. Cir. Feb. 21, 2017), *reissued as modified*, 864 F.3d 591 (D.C. Cir. July 17, 2017) (affirming dismissal of APA claims); *Collins v. FHFA*, 254 F. Supp. 3d 841 (S.D. Tex. 2017), *appeal argued*, No. 17-20364 (5th Cir. Mar. 7, 2018); *Saxton v. FHFA*, 245 F. Supp. 3d 1063 (N.D. Iowa 2017) (dismissing APA claims), *appeal docketed*, No. 17-1727 (8th Cir. May 24, 2017); *Robinson v. FHFA*, 223 F. Supp. 3d 659 (E.D. Ky. 2016) (same), *affirmed*, 876 F.3d 220 (6th Cir. 2017); *Roberts v. FHFA*, 243 F. Supp. 3d 950 (N.D. Ill. 2017) (same), *appeal argued*, No. 17-1880 (7th Cir. Oct. 30, 2017).

Fannie Mae & FHFA, *Voacolo*, No. 1:16-cv-1324 (D.D.C. Sept. 20, 2016). Plaintiff did not respond to either motion to dismiss, nor did he respond to other filings and court orders, so the court granted the motions to dismiss without prejudice. *See Voacolo v. Fed. Nat'l Mortg. Ass'n*, 224 F. Supp. 3d 39 (D.D.C. 2016).

ARGUMENT

I. FHFA AS CONSERVATOR HAS AN UNCONDITIONAL FEDERAL STATUTORY RIGHT TO INTERVENE

HERA grants FHFA as Conservator of Fannie Mae and Freddie Mac an unconditional statutory right to intervene. As discussed above, FHFA as Conservator has succeeded to "all rights, titles, powers, and privileges" of Fannie Mae and Freddie Mac. 12 U.S.C. § 4617(b)(2)(A)(i). Similarly, the Act provides that the Agency has the right to "take over the assets of and operate the [Enterprises] with all the powers of the shareholders, the directors, and the officers of the [Enterprises] and conduct all business of the [Enterprises]." 12 U.S.C. § 4617(b)(2)(B)(i).

By granting the Conservator all rights to Fannie Mae's assets and property and the right to operate Fannie Mae and conduct its business, Congress necessarily granted the Conservator a right to intervene in litigation involving Fannie Mae. Courts have regularly held that the Conservator has a statutory right to intervene under Fed. R. Civ. P. 24(a)(1) in matters where Fannie Mae or Freddie Mac are

named defendants. For example, in *Oakland County v. Federal National Mortgage Ass'n*, where FHFA moved to intervene in a matter brought by the Oakland County Treasurer against Fannie Mae for allegedly failing to pay transfer taxes, the court held that "[a]n examination of HERA as a whole reveals that Congress granted FHFA an unconditional right to intervene in this case." 276 F.R.D. 491, 495 (E.D. Mich. 2011). The court explained that HERA's provisions, particularly § 4617(b)(2)(A)(i) and § 4617(b)(2)(B)(i), "make clear that Congress intended to grant the Agency the right to exercise plenary control over Fannie Mae and Freddie Mac," and that it "views Congress's broad grant of authority to the Agency under [HERA] to include the right to participate in the defense of Fannie Mae and Freddie Mac's assets," *id.*; *see also Hertel v. Bank of Am.*, No. 1:11-cv-757, 2012 WL 48680, at *1 (W.D. Mich. Jan. 9, 2012) (finding "that HERA grants FHFA a statutory right to intervene pursuant to Fed. R. Civ. P. 24(a)(1)."); *Kuriakose v. Fed. Home Loan Mortg. Corp.*, No. 1:08-cv-7281, 2009 WL 323525, at *1 (S.D.N.Y. Feb. 6, 2009) (noting that HERA "established the FHFA and authorized its intervention in this case as conservator for Freddie Mac").

Congress's grant of authority to FHFA to participate in litigation involving Fannie Mae and Freddie Mac is not qualified. *See Oakland Cty.*, 276 F.R.D. at 494 ("[A]n intervenor possesses a statutory right to intervene only when a federal statute unambiguously grants the applicant an unconditional right to participate in

litigation . . . . If the intervenor must fulfill conditions, such as proving an 'interest' that has been impaired or impeded, then the legislation is conditional, not unconditional and Rule 24(a)(1) is not applicable." (alterations in original) (quoting 6 James Wm. Moore et al., *Moore's Federal Practice* § 24.02 (3d ed. 2011)). Accordingly, FHFA respectfully requests that the Court grant its motion to intervene pursuant to its unconditional statutory right to intervene in this matter pursuant to Rule 24. *See* Fed. R. Civ. P. 24(a)(1) ("On timely motion, the court must permit anyone to intervene who . . . is given an unconditional right to intervene by a federal statute.").[2]

II. FHFA HAS A RIGHT TO INTERVENE PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 24(a)(2)

In addition to FHFA's unconditional statutory right to intervene, FHFA has a right to intervene under Federal Rule of Civil Procedure 24(a)(2) because it "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest," and existing parties do not "adequately represent that interest." *See* Fed. R. Civ. P. 24(a)(2). Courts "'liberally construe[]' Rule 24(a) 'in favor of intervention.'" *ACR Energy Partners, LLC v. Polo N. Country Club, Inc.*, 309 F.R.D. 191, 191 (D.N.J. 2015) (alteration in original) (quoting *NLRB v. Frazier*, 144 F.R.D. 650, 655 (D.N.J.

[2] As explained in Section II, *infra*, this motion is timely.

1992)). There are four requirements for a Rule 24(a)(2) motion: "first, a timely application for leave to intervene; second, a sufficient interest in the litigation; third, a threat that the interest will be impaired or affected, as a practical matter, by the disposition of the action; and fourth, inadequate representation of the prospective intervenor's interest by existing parties to the litigation." *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 969 (3d Cir. 1998). Each requirement is satisfied here.

First, the motion is timely. "When determining if a motion to intervene is timely, 'the critical inquiry is: what proceeding of substance on the merits have occurred?'" *Boutros v. Restropo*, 321 F.R.D. 103, 106 (D.N.J. 2017) (quoting *In re Fine Paper Antitrust Litig.*, 695 F.2d 494, 500 (3d Cir. 1982)). Here, the answer is none. Plaintiff filed his Complaint on August 2, 2017, and service on all Defendants was complete on February 13, 2018. No other substantive filings have been made in this case. Thus, this action is in the earliest possible stage, with no proceedings on the merits, and FHFA's intervention at this stage will not cause any prejudice to Plaintiff.

Second, as described below, FHFA has a "sufficient interest" relating to this litigation. An interest is sufficient if it is "significantly protectable." *Kleisser*, 157 F.3d at 969. Although there is no "'precise and authoritative definition' of the interest that satisfies Rule 24(a)(2)," *id.*, "the polestar for evaluating a claim for

intervention is always whether the proposed intervenor's interest is direct or remote," *id.* at 972.

Here, Plaintiff has sued Fannie Mae and the United States to challenge the Third Amendment. The PSPAs and the Third Amendment thereto are agreements between Treasury and FHFA in its capacity as Conservator of Fannie Mae. *See* Third Amendment to Amended & Restated Senior Preferred Stock Purchase Agreement at 1 (describing the Third Amendment as an amendment to the PSPAs "between the UNITED STATES DEPARTMENT OF THE TREASURY ('Purchaser'), and FEDERAL NATIONAL MORTGAGE ASSOCIATION ('Seller'), *acting through the Federal Housing Finance Agency (the 'Agency') as its duly appointed conservator . . . .*" (emphasis added)), *available at* https://www.fhfa.gov/Conservatorship/Documents/Senior-Preferred-Stock-Agree/2012-8-17_SPSPA_FannieMae_Amendment3_508.pdf. The fact that this litigation challenges a contract to which FHFA as Conservator is a party establishes that the Conservator has a "significantly protectable" and "direct" in the subject matter of this litigation. Plaintiff himself effectively acknowledged this interest when he named FHFA as a party to the D.D.C. Complaint, which is based on the same underlying allegations. In short, FHFA's interest is sufficient because the relief sought would directly and significantly affect FHFA and the allegations in the Complaint revolve around FHFA's purported actions.

Third, disposition of this action may as a practical matter impair FHFA's ability to protect its interests. This requirement is satisfied if FHFA's "interest *might* become affected or impaired, as a practical matter, by the disposition of the action in [its] absence." *See Mountain Top Condo. Ass'n v. Dave Stabbert Master Builder, Inc.*, 72 F.3d 361, 368 (3d Cir. 1995) (emphasis in original). There is no question that if Plaintiff's challenge to the Third Amendment is successful, this might significantly impair FHFA's interests as any damages would be paid out of assets in the conservatorship of FHFA.

Fourth, absent intervention, FHFA's interests may not be adequately represented in this litigation challenging a contract to which FHFA is a party. Satisfaction of this final requirement is a "minimal" burden for the applicant, who need only show "that representation of his interest 'may be' inadequate." *Mountain Top Condo. Ass'n*, 72 F.3d at 368 (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)). Here, the Conservator is in a much better position to litigate issues related to its own contract. Not only was the Conservator directly involved in negotiating and drafting the PSPAs and Third Amendment, but the Conservator has extensive experience litigating matters under HERA, including the Third Amendment. *See supra* note 2 (listing cases in which FHFA has litigated challenges to the Third Amendment).[3]

[3] To be clear, FHFA's motion to intervene should not be construed as an admission that the Conservator is a proper Defendant to Plaintiff's claims.

III. FHFA SHOULD BE GRANTED PERMISSIVE INTERVENTION INTO THIS ACTION

Federal Rule of Civil Procedure 24(b) permits intervention by anyone who "has a claim or defense that shares with the main action a common question of law or fact." For the same reasons that FHFA has an interest in this action—because FHFA is a party to the Third Amendment, and Plaintiff directly challenges the Third Amendment, *see generally supra* Section II—there is no question that FHFA's claims and defenses "share[] with the main action a common question of law or fact." If granted leave to intervene, FHFA seeks to argue that the court lacks jurisdiction over this matter, that Fannie Mae is not a proper party to this action because Plaintiff's claims may be brought only against the United States, and (if the case is not dismissed on threshold grounds) that Plaintiff's constitutional challenges to the Third Amendment lack merit. FHFA's arguments are further articulated in the motion to dismiss that FHFA has attached hereto, which demonstrates that they share a common question of law or fact with the main action. Accordingly, permissive intervention under Rule 24(b) is warranted.

Plaintiff's due process and illegal exaction claims must be brought against the United States, and courts have held that neither Fannie Mae nor the Conservator are government actors for purposes of constitutional claims. *See, e.g.*, *Herron v. Fannie Mae*, 861 F.3d 160, 168-69 (D.C. Cir. 2017). However, even though these claims cannot be properly brought against the Conservator, the Conservator has a right to intervene in this action to bring all available defenses in response to Plaintiff's threatened impairment of its interest in the Third Amendment. Indeed, in *Herron*, the district court permitted FHFA's intervention for a very similar purpose—to argue that constitutional claims cannot be brought against Fannie Mae or the Conservator. *See Herron*, 681 F.3d at 166 (explaining that "FHFA, in its capacity as conservator, intervened and moved to dismiss" the *Bivens* action on the ground that it can be brought only against a government entity).

CONCLUSION

For the foregoing reasons, FHFA as Conservator requests that the Court grant its unopposed motion to intervene.

DATED this 26th day of March, 2018.

/s/ Thomas R. Curtin
Thomas R. Curtin
Kathleen N. Fennelly
GRAHAM CURTIN
A Professional Association
4 Headquarters Plaza
P.O. Box 1991
Morristown, New Jersey 07962-1991
(973) 292-1700

Asim Varma
Howard N. Cayne
David Bergman
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Avenue NW
Washington, DC 20001
(202) 942-5000
(*Pro Hac Vice* Petitions to be Submitted)

Attorneys for Proposed Intervenor Federal Housing Finance Agency

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DAVID J. VOACOLO, Plaintiff, v. FEDERAL NATIONAL MORTGAGE ASSOCIATION, and UNITED STATES of AMERICA, Defendants..	Civil Action No. 17-5667 (BRM)(LHG) **ORDER GRANTING MOTION TO INTERVENE (UNOPPOSED)**

THIS MATTER having been opened to the Court on the motion filed pursuant to Fed. R. Civ. P. 24 by the Federal Housing Finance Agency ("FHFA"), seeking entry of an order allowing FHFA to intervene in this action; and the Court having considered the papers filed in connection with this motion, and having received no opposition to the motion; and good cause having been shown,

IT IS, on this ___ day of _____, 2018,

ORDERED that FHFA's Motion to Intervene is hereby **GRANTED**.

HON. BRIAN R. MARTINOTTI
United States District Judge

Thomas R. Curtin
George C. Jones
Kathleen N. Fennelly
GRAHAM CURTIN
A Professional Association
4 Headquarters Plaza, P.O. Box 1991
Morristown, New Jersey 07962-1991
Telephone: (973) 292-1700

Asim Varma *(pro hac vice to be submitted)*
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Avenue, NW
Washington, DC 20001-3743
Telephone: (202) 942-5180

Attorneys for Defendant Federal Housing Finance Agency

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DAVID J. VOACOLO, Plaintiff, v. FEDERAL NATIONAL MORTGAGE ASSOCIATION, and UNITED STATES of AMERICA, Defendants.	Civil Action No. 17-5667 (BRM)(LHG) **CERTIFICATE OF SERVICE**

The undersigned member of the bar of this Court hereby certifies that service was made of Defendant Federal Housing Finance Agency's Unopposed Notice of Motion to Intervene, Memorandum of Law, text of proposed Order and this Certificate of Service by serving true electronic copies of these documents upon all counsel of record via Electronic Court Filing on March 26, 2018.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

/s/ Kathleen N. Fennelly
Kathleen N. Fennelly

Dated: March 26, 2018